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MAY 9, 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 696

FEDERAL BROADCASTING SYSTEM, INC., *Petitioner*,

v.

FEDERAL COMMUNICATIONS COMMISSION, *Respondent*,

and

WHEC, INC. and VETERANS BROADCASTING CO., INC.,
Intervenor-Respondents.

PETITION FOR REHEARING

CHARLES F. O'NEAL,
1625 K St., N.W.,
Washington 6, D. C.,
Attorney for Petitioner.

FRANCIS C. BROOKE,
Of Counsel.

9 May 1960

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Federal Broadcasting System, Inc., petitions this Honorable Court for a rehearing of its petition for a writ of certiorari. By order dated April 26, 1960, the time for filing this petition was extended to May 9, 1960.

The grounds upon which this petition is based deal exclusively with questions raised under Point 2 of the argument on Page 8 of the Federal Communications Commission's brief in opposition to the petition for certiorari.

Although a reply brief was filed, it is believed that the filing occurred after this Court had determined to deny the petition for certiorari.

PARTICULAR GROUNDS URGED

The cited portion of the Commission's brief urges that the question of the validity, or reality, of the Commission's vote should not be heard here for three reasons. These reasons and the answers are set forth in the three following paragraphs.

1. The Commission argues that the question was not passed upon by the Court of Appeals when it made its decision here in question. While its per curiam decision makes necessary some speculation as to its reasoning, the speculation is limited. Either it failed to determine a relevant question fairly presented or it determined that question adversely to Petitioner. The first course, in itself, would call for corrective action by this Court.

2. The Commission urges that on remand to it following the first decision of the Court of Appeals (No. 12,252, *Federal Broadcasting System, Inc.* v. *Federal Communications Commission*, 225 F. 2d 560) Petitioner sought no review on matters as to which the Court of Appeals had decided adversely. Following that Court's first decision Petitioner had two choices. It could have asked this Court to determine a question before administrative remedies had been finally exhausted; a question which administrative action might have rendered moot. On the other hand, it could exhaust those remedies; thereby coming into this Court with a complete record, if it were to come at all. In choosing the latter course, Petitioner was necessarily limited to the terms of the remand. *Federal Communications Commission* v. *Pottsville Broadcasting Company*, 309 U.S. 134; *Federal Radio Commission* v. *Nelson Bros. Bond & Morty. Co.*, 289 U.S. 266.

3. The Commission urges that the question of the validity of the vote of its members relates to an unimportant, isolated procedural action. It is submitted that a question going to the verity of an administrative body's records is never unimportant. Where, as is charged by the petition, the truthfulness of the Commission's records of its proceeding is fairly put in issue on review, that issue should be resolved. Without that review the reality of the government's recorded actions is always subject to doubt.

Respectfully submitted,

CHARLES F. O'NEALL,
1625 K St., N.W.,
Washington 6, D. C.,
Attorney for Petitioner.

FRANCIS C. BROOKE,
1625 K St., N.W.,
Washington 6, D. C.,
Of Counsel.

Certificate

I certify that at the request of Charles F. O'Neall, Esq., attorney for Petitioner, I prepared the aforegoing Petition for Rehearing. I further certify that it is being filed in good faith, and not for purposes of delay. By reason of the circumstances set forth in the second paragraph of the aforegoing petition, I believe it is confined to grounds specified by this Court's Rule 58(2).

FRANCIS C. BROOKE

Certificate of Service

I certify that copies of the foregoing Petition were mailed, first-class postage prepaid, to the following: (a) The Solicitor General, Department of Justice, Washington 25, D. C.; (b) Mrs. Ruth V. Reel, Office of the General Counsel, Federal Communications Commission, 12th St., N.W., at Pennsylvania Avenue, Washington 25, D. C.; (c) Thomas H. Wall, Esquire, Counsel for WHEC, Inc., Munsey Building, Washington, D. C.; and (d) Frank U. Fletcher, Esquire, Counsel for Veterans Broadcasting Co., Inc., Munsey Building, Washington, D. C., this 9th day of May 1960.

FRANCIS C. BROOKE